IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 11TH JUNE 2007 / 21ST JYAISHTA 1929

MFA.No. 511 of 2003()

OPMV.953/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA

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APPELLANT: PETITIONER

SURESH S/O. KUNJAN, PANELIKKAPARAMBIL HOUSE, MURINGOOR, VADAKKUMMURY, MUKUNDAPURAM TALUK.

BY ADV. SRI.P.V.BABY
SRI.A.N.SANTHOSH

RESPONDENTS: RESPONDENTS

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1. A.P.KANNAN, AZHAKATH HOUSE, CHALAKUDY.

2. UNNIKRISHNAN S/O. RAGHAVAN, AZHAKKATH HOUSE, PETTA, CHALAKUDY

3. ORIENTAL INSURANCE CO., 1ST FLOOR, BROTHERS BUILDING, GURUVAYOOR ROAD, KUNNAMKULAM.

BY ADV. SRI.P.V.JYOTHI PRASAD

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 11/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

M.F.A.No. 511 of 2003

Dated this the 11th June, 2007.

J U D G M E N T

The appellant was a passenger in an auto rickshaw bearing Registration No.KL-8/D 2109 from Angamaly to Chalakudy, on 24.4.1995. When the auto rickshaw reached near Muringoor, at about 3.30 p.m., it capsized, and appellant sustained injuries. He filed O.P. (M.V.) No.953/1995, before the Motor Accidents Claims Tribunal, Irinjalakuda, claiming compensation from the driver, owner as well as the insurer. Respondents 1 and 2 disputed negligence. It is contented that vehicle was covered under a policy of insurance issued by the 3rd respondent, insurer. The 3rd respondent, insurer, also admitted the existence of the policy, but contented that the quantum of compensation claimed is exorbitant. The negligence alleged was denied. After trial, the Tribunal found that the accident occurred due to the negligence of the driver of the auto rickshaw, and an amount of Rs.22000/= was ordered to be paid as compensation with 9% interest. The 3rd respondent, insurer, was directed to pay the said amount. Challenging that award, this appeal is filed.

2. The finding of the Tribunal regarding the negligence and the liability of the insurer has become final. So, the only question that arises for consideration is whether the appellant is entitled to any additional compensation. Appellant sustained compound fracture olecrenon (right elbow), and he was treated as inpatient in the West Fort Hospital, Thrissur, from 24.4.95 to 29.4.95. Appellant has produced bills for an amount of Rs.4,074/=. The Tribunal awarded an amount of Rs.4000/= for treatment expenses. I am of the view that the Tribunal ought to have ordered at least Rs.5000/= for treatment expenses. Though the petitioner sustained compound fracture (right elbow), no compensation on the ground of disability was granted. The appellant was awarded an amount of Rs.3000/= for pain and sufferings. I am of the opinion that Rs.8000/= ought to have been awarded on that count, and hence I award Rs.5000/= more on that count. I do not find any reason to modify the amount awarded on other counts. Hence, I am view that an amount of Rs.6000/= can be passed in favour of the appellant as additional compensation, which will carry interest at the rate of 7%.

In the result, the appeal is allowed in part. An amount of Rs.6000/= as additional compensation is passed in favour of the appellant, with 7% interest from the date of petition, till the date of realisation. The 3rd respondent is directed to deposit the above amount in favour of the appellant, and on deposit, the appellant can withdraw the entire amount.

K.PADMANABHAN NAIR,
JUDGE

nj.

K.PADMANABHAN NAIR, J.

M.F.A. No. 511 of 2003

J U D G M E N T

Dated: 11th June, 2007.